

REMARKS

Applicants have canceled claim 15 without prejudice.

The Examiner rejected claim 15 as allegedly not complying with 35 U.S.C. §112, second paragraph definiteness requirement.

Applicants respectfully submit that the rejection has been rendered moot in view of cancellation of claim 15.

The Examiner rejected claims 1-3 and 10-13 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-12 of co-pending application No. 10/589,709.

Applicants note, that claims 9-12 of application No. 10/589,709 issued on May 4, 2010 as U.S. Patent No. 7,709,262. Claims 1-9 are pending in a continuation application No. 12/496,390, filed on July 1, 2009.

While Applicants respectfully disagree with the propriety of the rejection, to expedite allowance of claims, Applicants herewith submit a Terminal Disclaimer executed by an authorized representative for the assignee of the entire interest for the U.S. Patent No. 7,709,262.

For the record, Applicants respectfully submit that MPEP804 states that

“If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the **earlier filed of the two pending applications**, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The present application is an earlier filed application compared to the application No. 10/589,709. As of the date of filing the present amendment, the later filed application is still undergoing pre-examination processing. However, claims 1-8, now pending in the application No. 12/496,390 application were rejected on other grounds in the parent application No. 10/589,709.

Therefore, Applicants respectfully submit that no Terminal Disclaimer should be needed with respect to application No. 12/496,390.

Applicants note that the cited U.S. application No. 10/589,709, now a U.S. Patent No. 7,709,262 was **filed after** the filing date of the present application. Namely, the application No. 10/589,709 is a national stage entry of PCT/US2005/005255, filed February 18, 2005 (claiming the benefit of a provisional application No. 60/545,382 filed on **February 18, 2004**), while the present application was filed **September 5, 2003**.

Applicants further note that the present application has been cited on the IDS in the later filed applications No. 10/589,709 and 12/496,390. No double patenting rejection was raised during prosecution of the application No. 10/589,709.

In view of the Terminal Disclaimer, Applicants respectfully submit that the non-statutory obviousness type double patenting rejection rejection should be withdrawn.

There being not other rejections on record, Applicants respectfully submit that the claims are now in condition for allowance. Early and favorable action is respectfully requested.

Applicants have attached a fee for the Terminal Disclaimer. Applicants believe that no other fees are currently due. In the event that any additional fees are required, the Commissioner is hereby authorized to charge Nixon Peabody LLP deposit account No. 50-0850.

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Respectfully submitted,

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